



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
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APPLICATION FOR CERTIFICATION
FOR THE *AVENAL ENERGY PROJECT*

DOCKET No. 08-AFC-1

ERRATA TO THE PRESIDING MEMBER'S PROPOSED DECISION

After reviewing the comments submitted by the parties on November 30, 2009, and discussing them at the December 2, 2009 Committee Conference, we incorporate the following changes to the November 10, 2009 Presiding Member's Proposed Decision (PMPD):

INTRODUCTION

1. Page 7, after the first full paragraph, add the following:

On December 2, 2009, the Committee held a conference to receive comments on the PMPD. Intervenor Rob Simpson made numerous oral comments including comments related to land use, air quality, GHG, and water resources. These are essentially concerns that Mr. Simpson has previously raised during this proceeding and which have been addressed as part of the record of this case. In addition, Ray Leon commented as a member of the public. He voiced his opinion that the City of Avenal has not taken into account local concerns about the Avenal Energy Project. His other remarks repeated comments he made at the evidentiary hearing. (7/7/09 RT 341-346.)

AIR QUALITY

1. Page 128, add a new paragraph with the following language immediately prior to the last sentence of the second full paragraph:

CRPE raised questions about an EPA rulemaking requiring offsets for PM2.5 emissions. However, the triggering threshold used in that rulemaking is 100 tons per year. The evidence establishes that the project's direct emissions of PM2.5 are 80.78 tons per year. Since that level is below the regulation threshold, the emission offset requirements in the EPA rulemaking would not apply to the Avenal Energy Project. (Ex. 200, p. 4.1-20.)

2. Page 131 insert the following new findings after Finding 7 and renumber all subsequent Findings:
 8. The Commission has properly considered the analysis and comments of the San Joaquin Valley Air Pollution Control District in an area in which the SJVAPCD has demonstrated expertise and jurisdiction.
 9. The record establishes that Commission staff has independently evaluated the SJVAPCD analysis and determined that it is accurate.

BIOLOGICAL RESOURCES

1. Page 220, first full paragraph, last sentence, delete the word “as”.

The site ~~as~~ has recently been used as an irrigated grain field.
2. Page 229, add the following to the end of the first partial paragraph:

Mr. Simpson also questioned the Staff witness about the potential impacts of project-related nitrogen deposition upon nearby plant species. Staff’s witness explained that given the soil and plant types in the project area, nitrogen deposition is unlikely to have a negative impact on plant life. (7/7/2009 RT 330 - 331)
3. Page 229, subsection 3, LORS Compliance, second paragraph, modify the second sentence as follows:

The Applicant has requested ~~would obtain the Biological Opinion (BO) from~~ the Environmental Protection Agency (EPA) consult with the USFWS under the Section 7 consultation process based upon Avenal Power’s request for a Prevention of Significant Deterioration Permit from EPA ~~with USFWS.~~

FACILITY DESIGN

4. Page 59: add the word “Verification” to Condition of Certification **GEN-6**.

Verification: At least 15 days (or within a project owner and CBO approved . . .
5. Page 62, in the electronic version of the PMPD, Condition of Certification **STRUC-1**, subpart 4 should read as follows:
 4. Ensure that the final plans, calculations, and specifications clearly reflect the inclusion of approved criteria, assumptions, and methods

used to develop the design. The final designs, plans, calculations, [and specifications shall be signed and stamped by the responsible design engineer \(2007 CBC, Appendix Chapter 1, § 106.3.4, Design Professional in Responsible Charge\); and](#)

LAND USE

6. Page 304, last paragraph, modify to read as follows:

Use of the site for power plant development is consistent with the city's General Plan Industrial Land Use element. The Heavy Industrial "M-2" zone within the Industrial "I" district is intended to accommodate a broad range of industrial activities and development. ~~Although power plants are not specifically listed as a permitted use in the "M-2" District, "public utility" uses are allowed. The City has determined that power plants are included in "public utility" uses.~~ (Ex. 200, pp. 4.5-11 to 4.5-12.) [The "M-2" zone specifically allows development of an "electrical power generating plant" as a conditional use within the "M-2" zone. \(See Zoning Ordinance of the City of Avenal § 9.31; see also Ex. 200, p. 3-2.\)](#)

7. Page 308, Finding of Fact 8, change to read as follows:

The project site is designated Industrial "I" under the Avenal General Plan and zoned Heavy Industrial "M-2", which allows a broad range of industrial activities and development including ~~"public utilities."~~ [an "electrical power generating plant."](#)

8. Page 308, Finding of Fact 9, change to read as follows:

The City of Avenal has determined that power plants are a ~~permitted~~ [conditional](#) use in the Heavy Industrial "M-2" zone under the ~~"public utilities~~ [utilities and resource extraction](#)" category.

9. Make the following changes to the Verification for **LAND-2**:

Verification: ~~At least 60 calendar days prior~~ [Prior](#) to the start of ~~construction~~ [ground disturbance \(as defined in this Decision\)](#), the project owner shall provide documentation to the CPM demonstrating compliance with one of these options.

NOISE

10. Page 340, last paragraph under subsection "2. Operations" correct to read as follows:

Finally, the evidence shows that the noise from the Avenal Energy Project, even when coupled with noise from expansion and operation of the

RELIABILITY

11. Page 73, second paragraph, last sentence, change to read as follows:

Applicant has elected to pursue a power purchase agreement with Pacific Gas and Electric (PG&E) [and other potential off takers](#) after this licensing process concludes.

12. Page 77, Findings of Fact number 11, change to read as follows:

The Applicant intends to procure a power purchase agreement with Pacific Gas and Electric Company [and other potential off takers](#) following completion of this licensing proceeding.

Dated: December 10, 2009 in Sacramento, California.



JEFFREY D. BYRON
Commissioner and Presiding Member
Avenal Energy AFC Committee



KAREN DOUGLAS
Chairman and Associate Member
Avenal Energy AFC Committee